



March 8, 2017

Attn: **WT Docket No. 16-421, Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies**

Re: **In the Matter of Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way**

Dear Commissioners and Staff:

On December 22, 2016, the Wireless Telecommunications Bureau (“WTB”) issued a public notice seeking comments on ways in which the Federal Communications Commission (“Commission”) could promote wireless infrastructure deployment by issuing a declaratory ruling in response to a Petition for Declaratory Ruling filed by Mobilitie, LLC (“Mobilitie”) on November 15, 2016.¹ The WTB specifically sought comments from providers and local governmental authorities on the process for reviewing and making decisions on siting applications for small wireless facilities (including DAS and small cells), particularly the amount of time it takes to complete this process. In response to the above-referenced docket, American Municipal Power, Inc. (“AMP”) and the Ohio Municipal Electric Association (“OMEA”) respectfully submit the following comments for the record of the Commission.

I. AMP’S AND OMEA’S INTEREST

AMP is a non-profit wholesale power supplier and service provider for 135 members, including 134 member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland. It also represents the Delaware Municipal Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. Combined, these member utilities serve more than 650,000 customers across a nine-state footprint. AMP’s core mission is to be public power’s leader in wholesale energy supply and value-added member services. It offers member

¹ See Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016) (hereinafter, “Mobilitie Petition”).

The Commission extended the deadline for comments until March 8, 2017.

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municipal electric systems the benefits of scale and expertise in providing and managing energy services and ensuring safe, reliable electric service.

OMEA was formed in 1962 and represents the state and federal legislative interests of AMP and 80 Ohio municipal electric systems. OMEA is closely aligned with AMP and shares AMP's concerns outlined herein.

AMP's and OMEA's members own and operate electric distribution utilities and have the authority and duty to provide safe and reliable utility services. As part of that duty, AMP and OMEA have the authority and obligation to manage access to and the occupancy or use of public ways, to receive cost recovery for the occupancy or use of public ways in accordance with law, and to promote coordination and standardization of municipal management of the occupancy or use of public ways in order to enable efficient placement and operation of structures, appurtenances, or facilities necessary for the delivery of public utility or cable services. The duties of promoting the public health, safety, and welfare regarding access to and the occupancy or use of public ways, as well as protecting public and private property and promoting economic development are important duties that AMP and OMEA do not take lightly.

Because AMP's and OMEA's members are indivisible in their utility and general municipal services, we closely follow regulatory initiatives that may impact the reliability of our members' energy or the ability to provide safe, reliable utility services. Ultimately, the policies that impact our members' utility systems directly impact their municipalities and customers. To that end, AMP's comments on Mobilitie's Petition for a Declaratory Ruling are aimed at AMP members' ability to provide safe, reliable services while recognizing the potential opportunities that small cell wireless deployment can bring to AMP's member communities.

It is also within AMP's and OMEA's interests to facilitate the deployment of advanced wireless service throughout their footprints, particularly in traditionally underserved areas. It is very important to AMP and OMEA communities to keep pace with the current wave of demand for mobile broadband and advanced mobile products and technologies, and anticipated future demand for 5G. AMP and OMEA look forward to the promised benefits of 5G deployment including faster data speeds, lower latency, fewer coverage gaps, and capacity to handle more devices at once. AMP and OMEA understand that in order to do so, a large amount of infrastructure deployment is needed and, given the smaller range of the small cell and wireless facilities, the fact that it must be built on infrastructure that is both prevalent and located close to consumers. With careful coordination and compliance with safety requirements, AMP and OMEA believe that our interests are not in conflict with rapid small cell wireless technology deployment. To that end, AMP and OMEA have already been working with wireless providers and cable providers to develop fair and efficient standards and procedures.

II. COMMENTS

A. Commission Action is Unnecessary and Impractical.

Mobilitie asked the Commission to interpret Section 253(c) of the Communications Act of 1934 to apply a single standard to municipal right of way authority, fees and related

disclosures throughout the nation. Such action by the Commission is unnecessary and impractical.

Commission action is unnecessary because existing and emerging state and local laws, practices and cooperative agreements in many, if not most states already provide a legal framework that demands equal treatment among similar applicants and protects those applicants against unreasonable fees and delays. For example, in many states, municipalities are required to provide open, comparable, nondiscriminatory and competitively neutral access to its public ways. Additionally, fees imposed, if any, may be based only on costs that are “actually incurred.”²

In addition to the already-existing state and local governing laws, over the last several months, the large wireless providers have begun aggressively pursuing new state laws that establish new, expedited review processes, capped fees, and limitations on the exercise of local zoning and other authority for the purpose of addressing some of the very concerns raised by Mobilite in its Petition. Specifically, in Ohio, in December of 2016, the Ohio legislature passed a law regulating access to municipal poles and utility structures in the rights of way for the express purpose of advancing the deployment of wireless technology.³ While far from perfect, S.B. 331 caps application and annual fees, reinforces nondiscriminatory access and creates a new, fast-tracked approval process for small cell facilities in the municipal rights of way.⁴ Additionally, Ohio has codified the public policy of advancing installation and operation of wireless facilities while recognizing the local government’s duty to protect the public health, safety and welfare.⁵ The new law also prohibits municipalities from enacting moratoriums on granting right of way access.⁶ AMP and OMEA are aware of similar ongoing efforts in numerous states across the country.

Isolated claims of impediments should not be attributed to municipalities broadly. Neither should such claims cause the Commission to impose federal standards that are unnecessary given other state and local legislative efforts.

In addition to the legislative efforts, municipalities and municipal electric utilities are working with wireless providers to come to cooperative solutions that strike an appropriate balance between wireless advancement and protecting the public rights of way. For example, in addition to the initiatives taken by the state legislature, AMP and OMEA are currently working with wireless and wireline telecommunications providers and cable providers to develop a model agreement that municipalities and wireless providers can use going forward to further streamline the attachment process. In 2014, AMP, OMEA and cable providers were able to develop a similar model agreement for right of way access that helped streamline deployment of technology services while safeguarding the public safety, health and welfare. Commission action that would apply blanket standards and restrict municipalities detracts from these efforts toward a collaborative solution. The Commission

² See, for example, Sections 4939.04 and 4939.05, Ohio Revised Code (“ORC”).

³ Ohio Senate Bill 331, effective March 21, 2017 (“Ohio S.B. 331”). The new Ohio law is attached hereto and incorporated herein as Attachment A for the Commission’s reference.

⁴ Section 4939.0319, ORC, caps fees to the lesser of \$250 or the amount charged for a similar permit. Sections 4939.031-4939.033, ORC, establish deadlines for processing right of way applications, and Section 4939.035, ORC, outlines limited instances where a municipality may toll an application.

⁵ Section 4939.02, ORC.

⁶ Section 4939.0317, ORC.

should not undercut this process before these working groups can come to a workable resolution.

B. Small Cell and Wireless Facilities In and Above the Electric Space Pose Unique Safety Challenges.

Mobilitie recognizes in its filing that to be effective, new wireless deployment will require a high density of wireless facilities at “hundreds of thousands and potentially millions of additional sites.”⁷ This number of wireless facilities has great potential to be a strain on existing infrastructure, heightening the concerns of placement and safety. More important than the significant volume of new wireless attachments as small cell and DAS deployments spread across the states is the placement of the attachments in, above and through the electric space.

As the Commission is aware, wireless installations on municipal electric poles include risers that extend into and through the electric space as well as pole top antennas and other facilities in and above the electric space. Because of the proximity of new attachments to energized electric facilities, these wireless installations must be performed by workers qualified to work in the electric space. The fact that wireless equipment is close to energized electric facilities is a consideration that must be addressed.

Each placement of small cell and wireless facilities has real potential to have public safety, health and welfare implications, particularly for electric utility service. These issues require municipalities, their public utilities divisions and any attachers flexibility in the placement, operation, and cost recovery of wireless facilities in the right of way. Wireless facility placement inches one way or the other can vastly change right of way access when considering electrified space on a pole, maintenance of the wireless facility in the future, traffic concerns, etc., not to mention weight and size of wireless facilities. Those serious safety factors can affect access to the right of way, actual and reasonable costs, and subsequent fees.

The Commission should also recognize that, while public power utilities understand the importance of (and welcome) infrastructure to deploy both wireline and wireless services to their communities, for most parts of the country, particularly small communities with municipal electric systems, widespread wireless technology deployment is just beginning or still only projected to begin in the near future. Thus, there may be a learning curve while pole owners adapt to devices that differ from the millions of wireline attachments they have been installing for generations. Not all municipalities or municipal electric utilities are alike. Municipalities need flexibility to meet the needs of their communities and, specifically for municipal electric utilities, continue the safe operation of their utilities. Where state laws do not already impose timelines and fee caps, it is important to note that the processes employed and the rates charged by municipal electric utilities, which are owned by their customers, are already subject to a decision-making process based upon constituent needs and interests. Pole attachment fees and review processes are instituted by municipalities and municipal electric utilities with the best interests of their customers in mind and the fees are just and reasonable, cost-based, negotiated, or applicable formulaic rates applied in a nondiscriminatory fashion to all attachers. As pole owners, municipal electric utilities must

⁷ Mobilitie Petition at 7.

also ensure that the rates they charge allow them to fulfil their responsibility to ensure safety and reliability. Furthermore, the governing structures of municipalities provide for a local review and remedy process for any aggrieved party.

It is also worth noting for the Commission's record that in spite of Mobilitie's allegations of noncooperation by municipalities, it has been AMP's and OMEA's member experience that regarding right of way occupancy requests, municipalities and municipal electric utilities have been able to work with wireless and wireline providers in a flexible and cooperative manner. It is Mobilitie that has, on balance, been non-responsive, uncompromising and, frankly, unclear in its purpose and goals. In several AMP/OMEA member municipalities, Mobilitie has requested to locate isolated one hundred and twenty (120) foot poles with thirty inch diameters in the public ways of AMP and OMEA members. It is our understanding that poles of such magnitude and distance are inconsistent with the infrastructure needed to deploy 5G technology, which requires significantly lower and denser application. Nonetheless, AMP and OMEA members have attempted to apply their process in a fair and nondiscriminatory manner. However, Mobilitie has often failed to respond in a timely manner or at all to questions regarding design or completeness of Mobilitie's applications. After several weeks or even months, Mobilitie has returned requesting a status update without providing responses to the questions. In AMP's and OMEA's experience, Mobilitie's claims are disingenuous at best and, if their requests are not processed in an expeditious manner, it stems from Mobilitie's own behavior and not an unwillingness by municipalities to work with wireless providers.

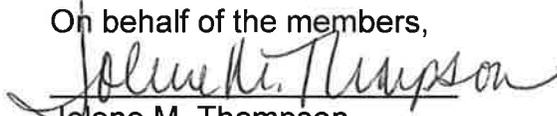
The Commission should not upset the careful balance between the need for widespread wireless deployment with the unique safety, reliability, and cost considerations inherent in installing wireless infrastructure to utility poles that is already being addressed at the state and local levels. Applying a one size fits all interpretation of 253(c) simply does not allow local governments and telecommunications providers the flexibility needed to address all of these local concerns with this large influx of wireless deployment.

III. CONCLUSION

AMP and OMEA support the rapid deployment of wireless services. However, in order to do so in the most effective and efficient manner, such deployment must include meaningful input of municipalities and the municipal electric utilities who own the poles and manage the public rights of way within which wireless providers want to place their wireless facilities. The nation's rights of way are a limited public resource and must be safely managed not just for this wave of deployment, but for decades to come. This management requires careful planning and flexibility for local entities.

These comments, while by no means exhaustive, represent issues of most concern to AMP and OMEA regarding Mobilitie's Petition and the deployment of wireless services. We thank the Commission for the opportunity to comment on this very important matter. If you need any additional information, please do not hesitate to contact us.

On behalf of the members,



A handwritten signature in cursive script that reads "Jolene M. Thompson". The signature is written in black ink and is positioned above the printed name.

Jolene M. Thompson

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Enclosure

Attachment A – Ohio Law Governing Wireless Use of Public Ways

4939.01 [Effective 3/21/2017] Municipal public way definitions.

As used in sections [4939.01](#) to [4939.08](#) of the Revised Code:

(A) "Accessory equipment" means any equipment used in conjunction with a wireless facility or wireless support structure. "Accessory equipment" includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.

(B) "Antenna" means communications equipment that transmits or receives radio frequency signals in the provision of wireless service, including associated accessory equipment.

(C) "Cable operator," "cable service," and "franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.

(D) "Distributed antenna system" means a network or facility to which all of the following apply:

(1) It distributes radio frequency signals to provide wireless service.

(2) It meets the height and size characteristics of a small cell facility.

(3) It consists of all of the following:

(a) Remote antenna nodes deployed throughout a desired coverage area;

(b) A high-capacity signal transport medium connected to a central hub site;

(c) Equipment located at the hub site to process or control the radio frequency signals through the antennas.

(4) It conforms to the size limitations specified in division (N) of this section.

(E) "Eligible facilities request" has the same meaning as in 47 U.S.C. 1455(a)(2).

(F) "Micro wireless facility" includes both a distributed antenna system and a small cell facility, and the related wireless facilities.

(G) "Micro wireless facility operator" means a public utility or cable operator that operates a micro wireless facility.

(H) "Municipal electric utility" has the same meaning as in section [4928.01](#) of the Revised Code.

(I) "Occupy or use" means, with respect to a public way, to place a tangible thing in a public way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

(J) "Person" means any natural person, corporation, or partnership and also includes any governmental entity.

(K) "Public utility" means any company described in section [4905.03](#) of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section [4905.02](#) of the Revised Code; and includes any electric supplier as defined in section [4933.81](#) of the Revised Code.

(L) "Public way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by a municipal corporation. "Public way" excludes a private easement.

(M) "Public way fee" means a fee levied to recover the costs incurred by a municipal corporation and associated with the occupancy or use of a public way.

(N) "Small cell facility" means a wireless facility that meets the requirements of division (N) (1) of this section and also division (N)(2) of this section:

(1)

(a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment,

power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(2) If the wireless facility were placed on a wireless support structure, the increased height would be not more than ten feet or the overall resulting height would be not more than fifty feet.

(O) "Utility pole" means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.

(P) "Wireless facility" means an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.

(Q) "Wireless service" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities.

(R) "Wireless support structure" means a pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities. As used in section 4939.031 of the Revised Code, "wireless support structure" excludes a utility pole or other facility owned or operated by a municipal electric utility.

Amended by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 6/11/2012.

Amended by 128th General Assembly File No. 43, SB 162, §1, eff. 9/13/2010.

Effective Date: 07-02-2002.

4939.02 [Effective 3/21/2017] State policy.

(A) It is the public policy of this state to do all of the following:

(1) Promote the public health, safety, and welfare regarding access to and the occupancy or use of public ways, to protect public and private property, and to promote economic development in this state;

(2) Promote the availability of a wide range of utility, communication, and other services to residents of this state at reasonable costs, including the rapid implementation of new technologies and innovative services;

(3) Ensure that access to and occupancy or use of public ways advances the state policies specified in sections [4927.02](#), [4928.02](#), and [4929.02](#) of the Revised Code;

(4) Recognize the authority of a municipal corporation to manage access to and the occupancy or use of public ways to the extent necessary with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public ways in accordance with law;

(5) Ensure in accordance with law the recovery by a public utility of public way fees and related costs;

(6) Promote coordination and standardization of municipal management of the occupancy or use of public ways, to enable efficient placement and operation of structures, appurtenances, or facilities necessary for the delivery of public utility or cable services;

(7) Encourage agreement among parties regarding public way fees and regarding terms and conditions pertaining to access to and the occupancy or use of public ways, and to facilitate the resolution of disputes regarding public way fees;

(8) Expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state.

(B) This policy establishes fair terms and conditions for the use of public ways and does not unduly burden persons occupying or using public ways or persons that benefit from the services provided by such occupants or users.

Amended by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

Effective Date: 07-02-2002.

4939.03 [Effective 3/21/2017] Prohibited conduct concerning public ways.

(A) No person shall occupy or use a public way except in accordance with law.

(B) In occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.

(C)

(1) No person shall occupy or use a public way without first obtaining, under this section or section [1332.24](#) or 4939.031 of the Revised Code, any requisite consent of the municipal corporation owning or controlling the public way.

(2) Except as otherwise provided in division (C)(5) of this section and sections 4939.031 and 4939.035 of the Revised Code, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent.

(3) A municipal corporation shall not unreasonably withhold or deny consent.

(4) If a request by a person for consent is denied, the municipal corporation shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent. If a request for consent is denied for an activity described in section 4939.031 of the Revised Code, the reasons required under this division shall be supported by substantial, competent evidence and the denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(5) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(6) Initial consent for occupancy or use of a public way shall be conclusively presumed for all lines, poles, pipes, conduits, ducts, equipment, or other appurtenances, structures, or facilities of a public utility or cable operator that, on July 2, 2002, lawfully so occupy or use a public way. However, such presumed consent does not relieve the public utility or cable operator of compliance with any law related to the ongoing occupancy or use of a public way.

Amended by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.031 [Effective 3/21/2017] Requests for consent from micro wireless facilities.

(A) A municipal corporation, not later than ninety days after the date of filing by an entity of a completed request for consent for any of the following, to be done in a public way, shall, subject to sections [4939.03](#), 4939.033 to 4939.037, and 4939.0313 to 4939.0319 of the Revised Code, grant or deny its consent:

(1) Attaching micro wireless facilities to a wireless support structure;

(2) Locating two or more wireless service providers' micro wireless facilities on the same wireless support structure;

(3) Replacing or modifying a micro wireless facility on a wireless support structure;

(4) Constructing, modifying, or replacing a wireless support structure associated with a micro wireless facility.

(B) Except as provided in this chapter as well as any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or public utility, a municipal corporation shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a micro wireless facility, or otherwise prohibit or restrain the activities as described in this section.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0311 [Effective 3/21/2017] Consent not required.

(A) Consent shall not be required for either of the following activities conducted in the public way:

(1) Routine maintenance of wireless facilities;

(2) The replacement of wireless facilities with wireless facilities that are either of the following:

(a) Substantially similar to the existing wireless facilities;

(b) The same size or smaller than the existing wireless facilities.

(B) A municipal corporation may require a work permit for an activity described in division (A) of this section. Any such permit shall be subject to any applicable law in this chapter.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0313 [Effective 3/21/2017] Consolidated requests.

(A) An entity seeking to construct, modify, or replace more than one micro wireless facility within the jurisdiction of a single municipal corporation may file, at the entity's discretion, a consolidated request for consent under division (A)(4) of section 4939.031 of the Revised Code and receive a single permit for the construction, modification, or replacement of the micro wireless facilities or associated wireless support structures.

(B) In the case of a consolidated request, the fees provided for in section 4927.0319 of the Revised Code may be cumulative.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0315 [Effective 3/21/2017] Restrictions on municipal authority.

With respect to the provision of any micro wireless facility, a municipal corporation shall not do any of the following:

(A) Require the requestor to submit information about, or evaluate a requestor's business decisions with respect to, the requestor's service, customer demand, or quality of service to or from a particular area or site;

(B) Require the requestor to submit information about the need for the micro wireless facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds;

(C) Require the requestor to justify the need for the new micro wireless facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies;

(D) Evaluate the request based on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure, including the options to submit a request under division (A)(1) or (2) of section 4939.031 of the Revised Code or under division (A)(4) of that section to modify an existing micro wireless facility or associated wireless support structure except that a municipal corporation may propose an alternate location within fifty feet of the proposed location, which the requestor shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;

(E) Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of the request. This division shall not preclude a municipal corporation from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities.

(F) Impose restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the federal aviation administration;

(G) Impose requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;

(H) Unreasonably discriminate among providers of functionally equivalent services;

(I) Impose unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;

(J) Require that the requestor purchase, lease, or use facilities, networks, or services owned or operated by the municipal corporation, in whole or in part, or owned or operated, in whole or in part, by any entity in which the municipal corporation has an economic governance interest;

(K) Condition the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure;

(L) Limit the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;

(M) Impose setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other types of structures in the public way;

(N) Impose environmental testing, sampling, or monitoring requirements that exceed federal law or that are not imposed on other types of construction or elements of the construction;

- (O) Impose any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the federal communications commission;
- (P) Impose separation requirements that require any space to be maintained between wireless facilities or wireless support structures;
- (Q) Prevent the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0317 [Effective 3/21/2017] Moratorium prohibited.

No municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent described in section 4939.031 of the Revised Code.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0319 [Effective 3/21/2017] Fees.

Any fee charged by a municipal corporation for a request for consent under section 4939.031 of the Revised Code shall not exceed the lesser of two hundred fifty dollars per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.032 [Effective 3/21/2017] Authority to operate micro wireless facility in a public way.

A micro wireless facility operator may construct and operate the facility in a public way, subject to this chapter.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0321 [Effective 3/21/2017] Jurisdiction, authority or control.

No municipal corporation shall have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0325 [Effective 3/21/2017] Attachment to wireless support structure.

(A) A municipal corporation shall permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way.

(B)

(1) The total annual charges and fees for the attachment and any activities related to the attachment shall be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or two hundred dollars per attachment.

(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.

(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators.

(D) Nothing in this chapter affects the need for an entity seeking to place a micro wireless facility on a public-utility owned utility pole to obtain from the public utility any necessary authority to place the facility.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.0327 [Effective 3/21/2017] Exclusive agreements.

A municipal corporation shall not enter into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.033 [Effective 3/21/2017] Exemption from zoning review.

A request for consent under section 4939.031 of the Revised Code shall be deemed a permitted use and shall be exempt from local zoning review.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.035 [Effective 3/21/2017] Tolling of time period for consent.

(A) The ninety-day time period required in section 4939.031 of the Revised Code may be tolled only:

- (1) By mutual agreement between the entity requesting consent and the municipal corporation;
- (2) In cases where the municipal corporation determines that the application is incomplete; or
- (3) By the municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests, in which case the municipal corporation may toll the ninety-day period for a reasonable amount of days not exceeding an additional ninety days.

(B) To toll the time period for incompleteness, the municipal corporation shall provide written notice to the entity requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0315 of the Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

(C) The time period begins running again when the entity makes a supplemental submission in response to the municipal corporation's notice of incompleteness.

(D) If a supplemental submission is inadequate, the municipal corporation shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (A) to (C) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.037 [Effective 3/21/2017] Failure to approve within time period.

If a municipal corporation fails to approve a request for consent under section 4939.031 of the Revised Code or a request for a relevant construction permit within the required time period, provided the time period is not tolled under section 4939.035 of the Revised Code, the request shall be deemed granted upon the requesting entity providing notice to the municipal corporation that the time period for acting on the request has lapsed.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.038 [Effective 3/21/2017] Applicability of regulations.

Nothing in this chapter precludes a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.039 [Effective 3/21/2017] Eligible facilities request.

Notwithstanding sections 4939.031 to 4 939.037 of the Revised Code, a municipal corporation shall approve within sixty days, and may not deny, an eligible facilities request under 47 C.F.R. 1.40001.

Added by 131st General Assembly File No. TBD, SB 331, §1, eff. 3/21/2017.

4939.04 Management, regulation, and administration of public ways by municipal corporations.

(A)

(1) A municipal corporation shall provide public utilities or cable operators with open, comparable, nondiscriminatory, and competitively neutral access to its public ways.

(2) Nothing in division (A)(1) of this section prohibits a municipal corporation from establishing priorities for access to or occupancy or use of a public way by a public utility or cable operator when the public way cannot accommodate all public way occupants or users, which priorities as applied to public utilities or cable operators shall not be unduly discriminatory and shall be competitively neutral.

(B) The management, regulation, and administration of a public way by a municipal corporation with regard to matters of local concern shall be presumed to be a valid exercise of the power of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution.

Effective Date: 07-02-2002.